

REMARKS

Claims 1-18 and 29-31 have been cancelled. Claims 19-28 have been rejected. By this Amendment, claims 23-24 and 37 have been amended. Claims 19-28 and 32-37 remain in the application.

Claim Rejections – 35 USC §112

Claims 23 and 24 have been amended to depend from claim 20. Claim 20 recites a first bushing and a second bushing. Accordingly, there is antecedent basis for the recitation of “said first bushing” and “said second bushing” in claims 23 and 24. Accordingly, claims 23 and 24 are believed to be patentable.

Claim Rejections – 35 USC §102

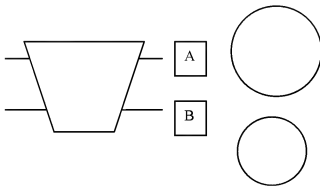
Applicants respectfully traverse the rejection of claim 32 under 35 USC 102(e) as being anticipated by Aikins et al., U.S. Pub. No. 2003/0040748. The Office Action fails to identify where Aikins et al. discloses two different drill guides (a compression drill guide and a noncompression drill guide), wherein the position of bore of the compression drill guide with respect to the central longitudinal axis of the compression drill guide is different from the position of the bore of the noncompression drill guide with respect to the central longitudinal axis of the noncompression drill guide. In the Office Action, reference is made to FIGS. 18 and 21 and paragraphs [0076]-[0078]. Although paragraph [0078] refers to “a tap sleeve (not shown) may be inserted into top screw guide cylinder 202, and a bone tap (not shown) may be used to pre-tap the guide hole in the bone for later insertion of a non-self tapping top screw”, no discussion of the position of the bore is found. Accordingly, Aikins et al. is not seen to disclose the provision of two different drill guides wherein the position of the bore of one drill guide with respect to the central longitudinal axis of that drill guide is different from the position of the bore of the second drill guide with respect to the central

longitudinal axis of the second drill guide. Since Aikins et al. fails to disclose all the elements of claim 32, Aikins et al. does not anticipate claim 32.

Claim Rejections – 35 USC §103

Applicants respectfully traverse the rejection of claims 19 and 21-28 under 35 U.S.C. §103 as being unpatentable over Herzenberg et al. (U.S. Patent No. 5,403,322) in view of Miller (U.S. Patent No. 2,424,485).

In the Office Action, Miller is cited as teaching a tapered external surface. It is said that tapering an internal surface to provide a tight fit would have been obvious. However, assuming arguendo that one of ordinary skill in the art would have been motivated to taper the inner surface of a tube, providing a taper does not necessarily provide a device with a non-circular transverse cross-section. Consider the shapes below, assuming that the figure on the left is an elevation of a frusto-conical shape. Taking cross-sections along lines A and B, the cross-sections would both be circular, albeit of different diameters.



Any tapered shape may define a right circular cone, unless specified otherwise. Neither cited reference discloses or suggests any shape other than a right circular cone. Accordingly, merely providing a tapered inner surface in a tube would not produce a tube that has a bore with a non-circular transverse cross-section. Moreover, Miller expressly disclosed that the

hole 13 in the bushing 11 is circular in shape ("The bushing 11 has a circular hole 13 passing longitudinally through it with its axis parallel to that of the body of the bushing. This hole 13 is located eccentrically in the bushing." Col. 2, lines 44-48). Neither Herzenberg et al. nor Miller disclose or suggest providing a tube with a bore having a non-circular cross-section. Therefore, claim 19 and its dependent claims 20-28 are all patentable over Herzenberg et al. and Miller.

Applicants respectfully traverse the rejection of claims 19 and 26-27 under 35 U.S.C. §103 as being unpatentable over McLaughlin et al. (U.S. Patent No. 5,312,409) in view of Cartwright et al. (U.S. Patent No. 5,192,293).

As recognized in the Office Action, McLaughlin et al. does not disclose or suggest use of a bushing with an elongate bore having a non-circular cross-section. Cartwright et al. is cited as teaching "an adapter insert or bushing having an elongated bore that is tapered or has a non-circular transverse cross-section for use with a specific drill nose (col. 3, lines 3-26)." However, as discussed above, a taper does not necessarily provide a non-circular cross-section. The undersigned finds nothing in Cartwright et al. to suggest that a tapered bore should be other than a right circular conical or frusto-conical shape. Thus, neither McLaughlin et al. nor Cartwright et al. disclose or suggest providing a tube with a bore having a non-circular transverse cross-section. Therefore, claim 19 and its dependent claims 26-27 are all patentable over Herzenberg et al. and Miller.

Applicants respectfully traverse the rejection of claim 21 under 35 U.S.C. §103 as being unpatentable over McLaughlin et al. (U.S. Patent No. 5,312,409) in view of Cartwright et al. (U.S. Patent No. 5,192,293) and further in view of Levy (U.S. Patent No. 5,540,695). Claim 21 depends upon claim 19, and is patentable for the reasons cited above with respect to

claim 19. Levy is not seen to overcome the above-discussed deficiencies in the teachings of McLaughlin et al. and Cartwright et al.

Applicants respectfully traverse the rejection of claims 19-20, 25-27 and 33-37 under 35 U.S.C. §103 as being unpatentable over Aikins et al. in view of Cartwright et al. and further in view of Miller.

With respect to claims 19-20 and 25-27, as discussed above, Aikins et al., Cartwright et al. and Miller are not seen to disclose or suggest providing a tube with a bore having a non-circular transverse cross-section. Therefore, claims 19-20 and 25-27 are all patentable over Aikins et al., Cartwright et al. and Miller.

With respect to claims 33-37:

- As discussed above with respect to the rejection of claim 32, Aikins et al. is not seen to disclose the provision of two different drill guides wherein the position of the bore of one drill guide with respect to the central longitudinal axis of that drill guide is different from the position of the bore of the second drill guide with respect to the central longitudinal axis of the second drill guide.
- In Cartwright et al., both inserts 32 and 40 are illustrated in FIG. 1 as having co-axially aligned bores. Accordingly, Cartwright et al. is not seen to disclose the provision of two different drill guides wherein the position of the bore of one drill guide with respect to the central longitudinal axis of that drill guide is different from the position of the bore of the second drill guide with respect to the central longitudinal axis of the second drill guide.
- Miller is not seen to disclose or suggest providing two separate drill guides, each selectively and separately fittable within a sheath. Only a single bushing 11 is found in Miller. Since only a single bushing is disclosed, Miller is not seen to

disclose or suggest the provision of two different drill guides wherein the position of the bore of one drill guide with respect to the central longitudinal axis of that drill guide is different from the position of the bore of the second drill guide with respect to the central longitudinal axis of the second drill guide.

Accordingly, Aikins et al., Cartwright et al. and Miller do not disclose or suggest all the elements of independent claim 32, and all of claims 32-37 are patentable over these references.

With respect to claim 37, even if one were to consider the knurled shoulder flange 12 of Miller to comprise a visualization guide, this knurled shoulder would not be considered to be sized and shaped to provide a unique indication of the position of a drill guide bore. Accordingly, claim 37 is patentable over Aikins et al., Cartwright et al. and Miller.

Conclusion

It is believed that the claims 19-28 and 32-37 are in condition for allowance.

Applicants respectfully request that a timely Notice of Allowance be issued in this case.

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